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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN DAVID ASHLOCK,

Defendant and Appellant.

F076696

(Super. Ct. No. CRF54156)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. James A. Boscoe, Judge.

Julia J. Spikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Clara M. Levers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Meehan, J. and Snauffer, J.

A jury convicted appellant Ryan David Ashlock of assault with a deadly weapon on a peace officer (Pen. Code, § 245, subd. (c)/count 1),¹ evading a peace officer (Veh. Code, § 2800.2/count 2), driving against traffic while evading a peace officer (Veh. Code, § 2800.4/count 3), unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)/count 4), and resisting arrest (§ 148, subd. (a)(1)/count 5), a misdemeanor. In a separate proceeding, the court found true a prior theft conviction (§ 666.5, subd. (a)) and a prior prison term enhancement (§ 667.5, subd. (b)).

On December 5, 2017, the court sentenced Ashlock to an aggregate term of seven years eight months: the upper term of five years on his assault on a peace officer conviction, a stayed three-year term on his evading a peace officer conviction, a consecutive eight-month term on his driving against traffic while evading a peace officer conviction, a consecutive one-year term on his unlawfully taking a vehicle conviction, a concurrent one-year term on his resisting arrest conviction, and a consecutive one-year prior prison term enhancement.

On appeal, Ashlock contends the court violated section 654 when it imposed unstayed terms on his convictions for driving against traffic while evading a peace officer and resisting arrest. We affirm.

FACTS

The prosecution evidence established that on August 15, 2017, sometime between 8:00 a.m. and 3:00 p.m., someone stole Angel Jimenez's Honda Accord from where it was parked at an apartment complex in Modesto.

On August 16, 2017, at 3:23 a.m., while on patrol, Tuolumne County Sheriff's Deputy Vincent Lee began following the Honda shortly after Ashlock drove it out of a casino parking lot near Sonora. Lee ran a record check on the Accord's license plate and

¹ All further statutory references are to the Penal Code unless otherwise indicated.

was informed that it had been stolen in Stanislaus County. Once Lee determined another deputy was close by, he activated his emergency lights. Ashlock did not yield and Lee activated his siren. Lee followed Ashlock as he reached speeds of 70 to 90 miles per hour in areas where the speed limit was 25 to 50 miles per hour and as he ran two red lights and three to five stop signs. Lee and another deputy eventually followed Ashlock into a cul-de- sac and positioned their patrol cars in the middle of the road, leaving enough space to allow Ashlock to drive between them. However, after turning his car around, Ashlock looked directly at Lee, accelerated to at least 20 miles per hour, and struck the front passenger's side of Lee's patrol car with the Accord's front passenger's side as he drove between Lee's patrol car and a parked car. Although the impact left Lee's patrol car disabled,² Ashlock was able to get back on the main highway and he continued to be pursued by other deputies.

California Highway Patrol Officer Elliot Lopez joined the pursuit and eventually took the lead car position.³ As the pursuit continued, Ashlock crossed into the lane for oncoming traffic several times, causing several vehicles to move over to the shoulder, including once when he drove around a curve where oncoming traffic was not visible. Eventually, the left front tire came off the Accord and it began riding on the rim. Nevertheless, the chase continued at speeds that exceeded the posted speed limit. Near Oakdale, the Honda ran over a spike strip that caused its right front tire to disintegrate, but the pursuit continued.

In Oakdale, Ashlock ran one red light and two stop signs before one of the Honda's rims came off and struck a patrol car. He then ran another stop sign and the Accord slowed down to 15 to 20 miles per hour before it stopped. Ashlock got out and

² The impact bent the push bumper and pushed it against the passenger tire.

³ Approximately 40 minutes of the pursuit, covering 37 to 38 miles, were recorded with a video camera mounted on Lopez's patrol car.

ran, chased by three officers, as he jumped over a fence, into the backyard of a house. He was eventually tackled by one of the officers and taken into custody as he continued to resist the officers' efforts to handcuff him.

California Highway Patrol Officer Dillon, Lopez's partner, walked Ashlock to a patrol car and checked him for weapons. When Dillon walked him to another patrol car, Ashlock tried to pull away, requiring Dillon to forcefully take him to the ground. Ashlock continued struggling with Dillon but soon gave up when other officers went to assist.

DISCUSSION

Ashlock contends he committed all the offenses except unlawfully taking a vehicle during a continuous course of conduct with the singular objective of avoiding apprehension. Thus, according to Ashlock, the trial court violated section 654's prohibition against multiple punishments when it imposed unstayed terms on his convictions for driving against traffic while evading a peace officer and resisting arrest. We disagree.

Section 654, subdivision (a) reads in part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." "[T]he section's proscription extends to include both concurrent and consecutive sentences" (*In re Adams* (1975) 14 Cal.3d 629, 636.)

“ ‘ “Section 654 has been applied not only where there was but one ‘act’ in the ordinary sense ... but also where a course of conduct violated more than one statute ... within the meaning of section 654.” [Citation.] [¶] Whether a *course of criminal conduct* is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the *intent and objective of the actor*. If all the offenses were

incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’ ” (*People v. Beamon* (1973) 8 Cal.3d 625, 637.) But even if a course of conduct is “directed to one objective,” it may “give rise to multiple violations and punishment” if it is “divisible in time.” (*Id.* at p. 639, fn. 11.) Where the defendant’s acts are “temporally separated” they “afford the defendant opportunity to reflect and to renew his or her intent before committing the next [offense], thereby aggravating the violation of public security or policy already undertaken.” (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935.)

“ ‘Whether the acts of which a defendant has been convicted constitute an indivisible course of conduct is a question of fact for the trial court, and the trial court’s findings [(whether express or implied)] will not be disturbed on appeal if they are supported by substantial evidence.’ ” (*People v. Cardenas* (2015) 239 Cal.App.4th 220, 229.)

In *People v. Trotter* (1992) 7 Cal.App.4th 363 (*Trotter*), as the defendant led police on a high-speed automobile chase, he fired at a pursuing officer with a gun. About a minute later, he fired a second shot at the same officer, followed by a third shot mere seconds later. (*Id.* at pp. 366–367.) On appeal, he argued he should not have been sentenced consecutively in two of the three assaults, arguing they were part of a single course of conduct and were incidental to one objective. (*Id.* at p. 366.) The *Trotter* court rejected this contention stating:

“The purpose behind section 654 is ‘to insure that a defendant’s punishment will be commensurate with his culpability. [Citation.]’ [Citation.] *Defendant’s conduct became more egregious with each successive shot. Each shot posed a separate and distinct risk to [the pursuing officer] and nearby freeway drivers. To find section 654 applicable to these facts would violate the very purpose for the statute’s existence. [¶] Furthermore, this was not a case where only one volitional act gave rise to multiple offenses. Each shot required a separate trigger pull. All three assaults were volitional and calculated, and were separated*

by periods of time during which reflection was possible. None was spontaneous or uncontrollable. '[D]efendant should ... not be rewarded where, instead of taking advantage of an opportunity to walk away from the victim, he voluntarily resumed his ... assaultive behavior.'” (*Trotter, supra*, 7 Cal.App.4th at pp. 367–368, italics added.)

It is unclear what conduct the jury relied on to find Ashlock guilty of resisting arrest because the prosecutor argued Ashlock resisted arrest when he fled on foot after the Accord stopped and again when he struggled with Dillon when the officer moved him to the second patrol car. However, the court could reasonably find that he had time to reflect on his conduct during the more than 40 minutes the pursuit lasted and between the time that the Accord’s rim came off and the car came to a stop. It could also reasonably have found that Ashlock’s conduct became more egregious when he fled on foot from the Honda because by fleeing from several officers in the middle of the night into a residential backyard, Ashlock greatly increased the risk of harm to the officers and the homeowner, as well as himself. Thus, section 654 did not bar imposition of an unstayed term on his resisting arrest conviction if the jury found Ashlock guilty of that offense based on his flight on foot. (*Trotter, supra*, 7 Cal.App.4th at pp. 367–368.)

Moreover, the court could reasonably have found that when Ashlock resisted arrest by struggling with Dillon, his objective was no longer to avoid apprehension because by that time he was handcuffed and did not have a realistic chance of escaping. Thus, section 654 did not bar imposition of an unstayed term on Ashlock’s resisting arrest conviction even if the jury based that conviction on Ashlock’s struggle with Dillon.

Further, Ashlock had plenty of time to reflect on his conduct during the lengthy pursuit and before each time he crossed over into the lane for oncoming traffic—greatly increasing the danger to the oncoming motorists and the officers pursuing him, as well as himself. Accordingly, we further conclude that section 654 did not bar the trial court from imposing an unstayed term on his driving against traffic while evading a peace officer conviction.

DISPOSITION

The judgment is affirmed.